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Letter dated 27 May 1999 from the Permanent Representatives of Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia to the United Nations addressed to the Secretary-General

On behalf of the Government of Bosnia and Herzegovina, the Government of the Republic of Croatia, the Government of The former Yugoslav Republic of Macedonia and the Government of Slovenia, we should like to refer to the depositary notification concerning the declaration under article 36, paragraph 2, of the Statute of the International Court of Justice made by the Federal Republic of Yugoslavia (Serbia and Montenegro) on 25 April 1999. The depositary notification states that the Federal Republic of Yugoslavia (Serbia and Montenegro) lodged the notification, by which it recognized the jurisdiction *ipso facto* of the said Court in accordance with article 36, paragraph 2, of the Statute of the Court.

Our respective Governments would like to express our disagreement with the content of the above-quoted notification. The notification can have no legal effect whatsoever, because the Federal Republic of Yugoslavia (Serbia and Montenegro) is not a State Member of the United Nations, nor is it a State party to the Statute of the Court, that could make a valid declaration under article 36, paragraph 2, of the Statute of the Court. Consequently, there was no legal basis for the acceptance or circulation of the invalid document in question.

In this connection, we would once again like to draw your attention to Security Council resolution 777 (1992) and General Assembly resolution 47/1, both of which explicitly state that the State known as the Socialist Federal Republic of Yugoslavia had ceased to exist, that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations, and that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations. Until the Federal Republic of Yugoslavia (Serbia and Montenegro) has complied with the requirements of those resolutions, it cannot be considered a State Member of the United Nations.

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Since a new application for membership in the United Nations, pursuant to Article 4 of the Charter of the United Nations, has not been made by the Federal Republic of Yugoslavia (Serbia and Montenegro) to date, and it has not been admitted to the United Nations, the Federal Republic of Yugoslavia therefore cannot be considered to be *ipso facto* a party to the Statute of the Court by virtue of Article 93, paragraph 1, of the Charter of the United Nations. Neither has the Federal Republic of Yugoslavia (Serbia and Montenegro) become a contracting party of the Statute of the Court under Article 93, paragraph 2, of the Charter, which states that a non-member State can only become a contracting party of the International Court of Justice's Statute under conditions set by the General Assembly on the recommendation of the Security Council on a case-by-case basis. Furthermore, the Federal Republic of Yugoslavia (Serbia and Montenegro) has not accepted the jurisdiction of the Court under the conditions provided for in Security Council resolution 9 (1946) and adopted by the Council by virtue of powers conferred on it by article 35, paragraph 3, of the Statute of the Court.

The reference to "Yugoslavia (Original Member)" in the list of States Members of the United Nations entitled to appear before the Court pursuant to article 35, paragraph 1, of the Statute of the Court and Article 93, paragraph 1, of the United Nations Charter (see *International Court of Justice Yearbook 1996–1997)* refers to the former Socialist Federal Republic of Yugoslavia and not to one of its successor States. By using the abbreviated name "Yugoslavia", the Federal Republic of Yugoslavia (Serbia and Montenegro) deliberately manipulates the situation and tries to create the erroneous assumption that the State party to the Statute, namely the Socialist Federal Republic of Yugoslavia, is the same as one of the five successor States, namely the Federal Republic of Yugoslavia (Serbia and Montenegro), only.

Because the Federal Republic of Yugoslavia (Serbia and Montenegro), which made the declaration under article 32, paragraph 2, of the Statute of the Court, is not the same legal entity under international law as a State which was the original Party to the Statute of the Court, namely, the Socialist Federative Republic of Yugoslavia, it is the opinion of our Governments that the notification is null and void.

In the light of the above, the four successor States kindly request that, in your capacity as depositary, this issue be brought to the attention of the Registry of the Court in order for it to make the necessary clarification in the *Yearbook*.

We should be grateful if you could circulate this letter to all Member States of the United Nations as a document of the General Assembly, under agenda items 13 and 149.

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Ambassador
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(*Signed*) Danilo **Türk**
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(*Signed*) Naste **Čalovski**
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